Supreme Court, U. S.
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In The

Supreme Court of the United States

October Term, 1997

JAMES R. KING,

Appellant,

v.

STATE BOARD OF ELECTIONS, *et al.*,

Appellees,

BOBBY RUSH, TIMUEL BLACK, AL JOHNSON, ELVIRA CARRIZALES, NEOMI HERNANDEZ and THE CHICAGO URBAN LEAGUE,

Defendant-Intervenors.

On Appeal From The United States District Court For The Northern District Of Illinois

DEFENDANT-INTERVENORS' MOTION TO AFFIRM

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MOTION TO AFFIRM

Defendant-Intervenors hereby move to affirm the judgment sought to be reviewed on the ground that it is evident that the questions raised by appellant in his Jurisdictional Statement are so unsubstantial as not to need any further argument. The decision entered on the merits below is based on law established by this Court, and there is no conflict which requires this Court's resolution.

STATEMENT OF THE CASE

Appellant's statement of the case contains misstatements and incomplete recitations of the underlying facts. As a result, the statement of the case requires clarification.

This case involves a challenge to a 1991 court-ordered remedial plan which was designed to remedy proven past and present discrimination against Hispanics in and around the City of Chicago.[1] The plan at issue was created by a three-judge panel sitting in the case of *Hastert v. State Board of Elections*, 777 F. Supp. 634, 637 (N.D. Ill. 1991). The *Hastert* court preserved three existing African American majority districts and created the first Hispanic majority congressional district (the Fourth Congressional District) in Illinois thereby affording a majority of the 545,852 Hispanics in Chicago the ability to elect a congressional candidate of their choice for the very first time.

Following this Court's pronouncement in *Shaw v. Reno*, 509 U.S. 630, 113 S. Ct. 2816 (1993) *(Shaw I)*, the plaintiff in this action filed a lawsuit under the Equal Protection Clause of the Fourteenth Amendment challenging the constitutionality of District Four. Plaintiff

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[1] The terms "Hispanic" and "Latino" are used interchangeably throughout this motion.

King alleged that the court-ordered plan was drawn predominately on the basis of race and without compelling justification. After a trial, on March 6, 1996, the three-judge district court issued an opinion and order holding that the 1991 court-ordered Fourth Congressional District passed constitutional muster. In so holding, the three-judge court applied this Court's rulings in *Shaw I* and *Miller v. Johnson*, 515 U.S. 900, 115 S. Ct. 2475 (1995), and found that: (1) District Four was "bizarrely" shaped; (2) racial considerations predominated in the drafting of the district; (3) the *Hastert* court properly found the existence of the *Gingles* preconditions in determining a violation of Section 2; (4) the existence of the *Gingles* preconditions remained in effect at the time of trial; (5) remedying a Section 2 violation is a compelling state interest; and (6) the court-ordered Fourth Congressional District is narrowly tailored.

Subsequently, this Court decided *Shaw v. Hunt*, 517 U.S. ___, 116 S. Ct. 1894 (1996)*(Shaw II)* and *Bush v. Vera*, 517 U.S. ___, 116 S. Ct. 1941 (1996). Plaintiff King appealed the lower court's March 6, 1996 decision to this Court. Defendant-intervenor, the United States, asked this Court to vacate and remand for further consideration in light of the *Shaw II* and *Bush* decisions. While so doing, the United States was clear in its belief that the lower court arrived at the proper decision in upholding the constitutionality of the district. On November 12, 1996 this Court issued an order to vacate and remand "for further consideration in light of *Shaw v. Hunt*, 517 U.S. ___ (1996) and *Bush v. Vera*, 517 U.S. ___ (1996)."

On August 1, 1997, the lower court, upon further consideration of this case in light of the *Shaw II* and *Bush* decisions, re-affirmed its March 6, 1996 opinion. Plaintiff King appealed the lower court's August 1, 1997 decision to this Court.

A. The Fourth Congressional District.

As of 1991, District Four had a population of 571,530 persons. Hispanics account for 65% of the total population and 59% of the voting age population. Over 95% of the population of District Four is located in two core areas, on the northside and southside of the district. J.S. App. at 44, n.49. The remaining 4.7% of the total population is located in the "western connector" which wraps around the African American majority Seventh Congressional District. *Id.* The "western connector" was the result of an effort to avoid clear retrogression in the African American majority districts, thereby preserving the three existing African American districts mandated by the Voting Rights Act. *See, Hastert,* 777 F. Supp. at 650.

The "western connector" contains primarily vacant and unpopulated land. J.S. App. at 44, n.49. District Four is the geographically smallest of any of the 1991 Illinois congressional districts, J.S. App. at 101, it measures only 16 miles in width and 14 miles in length. D.I. App. at 1.[2]

B. The *Hastert* Decision.

In order to properly understand the insufficiency of the issues raised in King's Jurisdictional Statement, it is important to recount the history of the *Hastert* decision, which formed the basis for the *King* court's decision upholding District Four.

The three-judge panel in *Hastert* was convened after the legislature of the State of Illinois failed to pass a reapportionment plan following the release of the 1990 census. The 1990 census revealed that the State of Illinois had lost two of its twenty-two seats in the House of Representatives. *Hastert v. State Board of Elections,* 777 F. Supp. 634, 637 (N.D. Ill. 1991). As a result, lawsuits were filed in federal court seeking to declare the then-current

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[2] Hereinafter "D.I. App. at ___" refers to the Appendix to Defendant-Intervenors' Motion to Affirm filed herewith.

reapportionment plan, which was based on 1980 census data, to be unconstitutional and in violation of Section 2 of the Voting Rights Act. *Id.*

During a two day trial, the *Hastert* court ordered that the parties "submit their evidence in the form of affidavits and depositions, supplemented by any maps and statistical data . . . ." *Hastert*, 777 F. Supp. at 639-40. Each party was able to submit one proposed reapportionment plan to the court for consideration. As part of this process, the parties were able to reach stipulations on a number of factual matters including a stipulation that "the population and demographic changes within the City of Chicago from 1980 to 1990 mandated the creation of an Hispanic majority district." The parties also ultimately submitted two proposed Hispanic majority configurations for the court's review.

Although the parties stipulated to the creation of an Hispanic majority district, the *Hastert* court nonetheless undertook a thorough review of the evidence to determine whether the proposed plans were a legal remedy to a Section 2 violation. *Hastert*, 777 F. Supp. at 640. The proposed plans submitted by the parties were almost identical with respect to the proposed majority Hispanic district: two dense Hispanic population concentration areas in the City of Chicago located north and south were linked together via a western connector that was substantially unpopulated. *Hastert*, 777 F. Supp. at 646. The *Hastert* court assessed the proposed plans both under federal constitutional standards and Section 2 of the Voting Rights Act. *Id.* at 640.

1. The *Hastert* Court's Section 2 Determination.

Applying the three preconditions articulated in *Thornburg v. Gingles*, 478 U.S. 30, 50-51, 106 S. Ct. 2752, 2766 (1986), the three-judge panel of the *Hastert* court reviewed the evidence submitted in the case and made a

number of factual determinations. The *Hastert* court concluded that the Hispanic community was sufficiently large and geographically compact to constitute a majority in a single district. *Hastert*, 777 F. Supp. at 649. The 1990 census figures revealed that the Hispanic population in the City of Chicago increased by 29% to 545,852 and the Hispanic population in Cook County increased by 39% to 694,194. The court found that the Hispanic population in Chicago is located in two "highly concentrated" enclaves between which runs the Seventh Congressional District, an African American majority district. *Id.* at 648-49.

The court determined that the two enclaves of Hispanic population did not indicate separate communities, but they "appear[ed] to have occurred as a result of exogenous physical and institutional barriers." *Hastert*, 777 F. Supp. at 649. These exogenous barriers include an expressway as well as "expanses of land developed by the University of Illinois-Chicago Circle and various other medical institutions" which cut through the two Hispanic enclaves. *Hastert*, 777 F. Supp. at 648-49. Furthermore, the two enclaves were approximately one mile apart at their closest point. *Id.*, *see also* D.I. App. at 1.

The *Hastert* court ruled that the Hispanic community is politically cohesive. *Hastert*, 777 F. Supp. at 650. Although the court did note that prior judicial decisions found that the Hispanic community was politically cohesive, the court did not base its conclusion solely on this fact.[3] The *Hastert* court had before it affidavits from

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[3] King erroneously asserts that the *Hastert* court relied solely on prior judicial decisions to support its findings of past discrimination against Hispanics. J.S. at 20. King ignores the true relevant facts. On the issue of the *Gingles* preconditions, the *Hastert* court relied upon the evidence submitted at trial which consisted of ecological regression statistical data demonstrating white bloc voting and Hispanic cohesion. *Hastert*, 777 F. Supp. at 650. In further support, the court noted a history of Hispanic vote dilution in Chicago as set out in prior judicial decisions. *Id.*

members of the Hispanic community in Chicago and a sociologist describing actual shared interests among the Hispanic community in Chicago. *Hastert*, 777 F. Supp. at 649.

The court also reviewed statistical evidence of racial bloc voting patterns in Chicago and determined that "ethnic bloc voting patterns have thwarted the political interests of the Hispanic community." *Id.* at 650. Lastly, the court found that the history of past and present discrimination against the Hispanic community in Chicago had an attendant impact on effective political participation and representation. *Id.*

2. The *Hastert* Court's Constitutional Analysis.

The *Hastert* court found that the proposed plans adhered to the "one person, one vote" principle. *Hastert*, 777 F. Supp. at 644. The plans were also evaluated to determine whether either had the discriminatory effect of diluting minority voting strength. *Id.* at 645. The *Hastert* court also examined the partisan political fairness of the proposed plans. The court found that the plan was "politically fair." *Id.* at 659.

The *Hastert* court considered the shape of the district in determining whether Section 2 of the Voting Rights Act required as a remedial measure the creation of District Four. The *Hastert* court remarked that because the proposed Hispanic district was an "extraordinary configuration," the court would not agree to the remedial measure without carefully scrutinizing the proposed district. *Hastert*, 777 F. Supp. at 648.

And in the *King* trial, there was clear statistical evidence of vote dilution in the Hispanic community. J.S. App. at 51-52. Moreover, because King declined to put on any evidence below concerning the *Hastert* "totality of the circumstances" findings, he can argue no error on this point. *Id.* at 53.

In scrutinizing the district, the *Hastert* court determined that District Four's shape was necessary to counteract the effects of white bloc voting and was required to remedy the vote dilution of Hispanics in the affected area while also protecting the three African American majority districts against vote dilution. *Id.* at 662.

C. The *King* Court's Decision.

On December 13-15, 1995 a three day trial was held on this matter. As a preliminary matter, the *King* court recognized that the case was in a unique posture since it was a challenge to the determination made by a three-judge panel in the *Hastert* case, and determined that it would take judicial notice of the findings of fact of the *Hastert* court.[4]

At trial, the parties presented evidence that had been previously admitted in the *Hastert* litigation. The parties put on witnesses that addressed the three *Gingles* preconditions, including statistical data on voting patterns in the City of Chicago up to and including elections in 1995. All parties were able to fully argue and brief their respective positions to the court. After trial, on March 15, 1996, the three-judge panel issued a written decision upholding the constitutionality of District Four.

1. The *King* Court's Application of Strict Scrutiny to the *Hastert* Court's Plan.

In applying this Court's rulings in *Shaw* and *Miller*, the *King* court subjected the *Hastert* court's Fourth Congressional District to strict scrutiny. J.S. App. at 30-37. The court further ruled that the *Hastert* evidence was conditionally admitted at trial for purposes of showing

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[4] Consistent with Seventh Circuit precedent, the lower court ruled that due to the unique nature of the case and the need to expedite matters for trial, judicial notice of the *Hastert* findings would be taken. *See, Philips Medical Sys. Int'l B.V. v. Bruetman*, 982 F.2d 211, 215 n.2 (7th Cir. 1992).

what evidence was relied upon by the *Hastert* court. J.S. App. at 7-16. In deciding to take judicial notice of the *Hastert* findings, the *King* court stated that it would adopt those findings as conclusive unless King showed that the *Hastert* court erred, by law or otherwise, in making the specific findings or that changed circumstances existed since November 1991 such that the findings of the *Hastert* court were no longer valid. J.S. App. at 16. The *King* court ruled that plaintiff King must establish changed circumstances by a preponderance of the evidence. *Id.* If changed circumstances were established, the *King* court would then analyze the evidence *de novo*. *Id.* King failed to demonstrate legal error or changed circumstances.

a. The *King* Court's Analysis of the *Hastert* Court's Section 2 Findings.

The *King* court determined that the *Hastert* court properly found that the Hispanic community was sufficiently large and geographically compact under the first prong of *Gingles* and that plaintiff King failed to rebut this finding by competent evidence. The court rejected plaintiff's argument that the Hispanic community in Chicago lacked political cohesion because it consists of Mexican-American and Puerto Rican residents. The only evidence plaintiff King submitted was anecdotal evidence which the *King* court found was "incredible, and wholly insufficient to support the inferences and conclusions King seeks to draw." J.S. App. at 50.

King argued at trial that changed circumstances existed with respect to the *Hastert* court's findings of racial bloc voting. The *King* court rejected this argument because it was not supported by the recent citywide elections or any meaningful statistical analysis. J.S. App. at 51-52. Instead the court credited Professor Allan Lichtman's ecological regression and extreme case analysis of forty-one elections held between 1983 and 1995. Professor

Lichtman's analysis established a "definite and continuing pattern of white racial-bloc voting against Hispanic candidates." *Id.*

Lastly, at trial King argued that District Four was not sufficiently compact to create a remedial district. In support of this argument King offered evidence that the district has many sides and is not visually appealing. The court rejected this argument. The court found that the evidence from the *Hastert* case and the evidence taken at trial in this case, confirmed that the Hispanic community in Chicago was geographically compact as required by *Gingles*. J.S. App. at 52-53.

The *King* court concluded its review of the *Hastert* Section 2 findings as follows:

> [T]he *Hastert* court had a strong basis for finding a Section 2 violation and for adopting a redistricting plan that remedied that violation. In this regard, the *Hastert* court cited with approval prior judicial determinations that found a definite and continuing pattern and practice of electoral discrimination against the Hispanic community in the City of Chicago and the State of Illinois. The *Hastert* court further found that this historical discrimination against the Hispanic community was on-going, most visibly in the racial bloc voting that effectively limited the Hispanic community to a disproportionately small number of Hispanic elected officials at the city and state-levels and more subtly in the social and economic discrimination that adversely affected effective political participation and representation. Under these circumstances, the creation of an Hispanic majority district advanced the state's compelling interest of remedying past discrimination against Hispanics.

J.S. App. at 54-55 (footnote omitted).

After finding that the *Hastert* court's adoption of District Four was an appropriate remedy to a finding of

vote dilution under Section 2, the *King* court then addressed the issue of narrow tailoring.

D. The *Hastert* and *King* Courts' Finding of Narrow Tailoring.

In *Hastert*, the court subjected the two proposed plans to an exacting constitutional review. *Hastert*, 777 F. Supp. 640-62. In so doing, the court noted that District Four was narrowly tailored to include those Hispanics who suffer from vote dilution. *Hastert*, 777 F. Supp. at 650. Further, the court stated that District Four contained the number of Hispanic residents that was minimally necessary to ensure a reasonable opportunity to exercise effective political participation. *Hastert*, 777 F. Supp. at 655. Moreover, the court determined that the shape of the district was required to preserve the shared interests of Hispanics while also protecting the three African American majority districts from vote dilution. *Id.*

In determining which plan better served the remedial purpose of curing vote dilution, the *Hastert* court evaluated both plans for fairness to the voting rights of the African American and Hispanic racial/ethnic majorities. *Hastert*, 777 F. Supp. at 645. Because three African American majority districts already existed prior to the litigation, the *Hastert* court was concerned that any new remedial plan not result in "retrogression" of the ability of African Americans to choose a candidate of choice. *Id.* at 647. Because it had been established that a 65% majority of African Americans in a district was required to provide a meaningful opportunity to elect a candidate, *see Ketchum v. Byrne*, 740 F.2d 1398, 1408 n.7 (7th Cir. 1984), *cert. denied*, 471 U.S. 1135 (1985), the court reviewed the proposed plans in order to determine whether any remedial measure afforded the Hispanics would impermissibly dilute African American voting strength. *Hastert*, 777 F. Supp. 647-48.

The *Hastert* court adopted a remedial plan which accomplished both objectives in the least intrusive manner. The plan created a new Hispanic majority district with 65% total population and maintained three African American districts with at least 65% total population. The court also scrutinized the proposed remedial plans and determined that the plan that was subsequently adopted best served the interest of fairness to both Democrats and Republicans. *Hastert*, 777 F. Supp. at 655-59. In fact, the court noted that the creation of an Hispanic majority district and the maintenance of three African American majority districts had bipartisan support. *Id.* at 646 n.19.

The *King* court, rejecting plaintiff King's arguments to the contrary, found that there exists a strong basis in the evidence for a finding that the *Gingles* preconditions were met, J.S. App. at 54-55; 65, and, under the totality of the circumstances, that District Four was warranted under Section 2. J.S. App. at 54-55. The *King* court also found that the shape of District Four serves to preserve the shared interests of Hispanics while preserving the core of existing districts and recognizing the traditional redistricting principle of incumbency protection. J.S. App. at 70-71 n.4.

Ultimately, the *King* court held that the *Hastert* court had scrutinized the constitutionality of District Four and had properly determined that the district was an appropriate remedy to cure a Section 2 violation. J.S. App. at 57; 72-73. The *King* court did note that the adopted plan "includes virtually all areas of high Hispanic concentration on the northern . . . part of the City of Chicago as well as virtually all of the areas of high Hispanic concentration on the southern part of the City of Chicago," J.S. App. at 43 (internal citations omitted), with the "western connector" making up only 4.7% of the total population of the district and 3.1% of the district's Hispanic population. J.S. App. at 44 n.49. The court concluded that the plan was "properly proportioned to the nature of the violation" and was "narrowly tailored," J.S. App. at 57, in

that "its consideration of race (reflected by its noncompactness and irregularity) is no more than reasonably necessary to fulfill its remedial purpose." J.S. App. at 72-73.

ARGUMENT

In an effort to remedy proven past and present electoral discrimination in voting rights against Hispanics in Chicago and to avoid similar discrimination against African American voters, the lower court in this case allowed a 1991 court-ordered remedial plan to stand against a constitutional challenge. In following this Court's precedent, the *King* court determined, upon a thorough review of all the evidence, that the application of strict scrutiny to the 1991 remedial plan was indeed not "fatal in fact." *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 115 S. Ct. 2097, 2117 (1995). The judgment below should be affirmed.

I. THE DISTRICT COURT CORRECTLY FOUND THAT CREATION OF A MAJORITY HISPANIC DISTRICT WAS REQUIRED TO SERVE THE COMPELLING GOVERNMENTAL INTEREST OF COMPLYING WITH SECTION 2 OF THE VOTING RIGHTS ACT.

There is a compelling governmental interest in complying with Section 2 of the Voting Rights Act so as to assure that a state's redistricting plan does not dilute minority voting strength. *Bush v. Vera*, ___ U.S. ___, 116 S. Ct. 1941, 1968-69 (1996) (O'Connor, J., concurring); *id.* at 1975, 1989 (Stevens, J., joined by Ginsburg and Breyer, JJ., dissenting); *id.* at 1998, 2007 (Souter, J., joined by Ginsburg and Breyer, JJ., dissenting). As Justice O'Connor observed in *Bush*, 116 S. Ct. at 1969-1970:

> [W]here voting is racially polarized, § 2 prohibits States from adopting districting schemes that would have the effect that minority voters "have less opportunity than other members of

> the electorate to . . . elect representatives of their choice." § 2(b). That principle may require a State to create a majority-minority district where the three *Gingles* factors are present – viz., (i) the minority group is sufficiently large and geographically compact to constitute a majority in a single-member district," (ii) "it is politically cohesive," and (iii) "the white majority votes sufficiently as a bloc to enable it . . . usually to defeat the minority's preferred candidate." *Thornburg v. Gingles*, 478 U.S. at 50-51.

The three-judge court in this case concluded that all three of the *Gingles* factors were present, and that a majority Hispanic district was necessary to comply with Section 2. Those findings are supported by substantial evidence, are not clearly erroneous, and present no issue warranting further review by this Court.

First, both the *Hastert* Court in 1991, and the court below in 1996 and 1997, found that the Hispanic population of Chicago was sufficiently large and geographically compact to constitute a majority in a single-member district. *Hastert*, 777 F. Supp. at 649; J.S. App. at 52-53. As both courts acknowledge, the Hispanic population in Chicago had grown to 545,852 by 1990; most of this population is clustered in two dense enclaves that are approximately a mile apart at their closest point and this small separation does not reflect the existence of two distinct communities, but merely the presence of a highway and institutional campuses that lie between the two enclaves. *Id.*, citing *Hastert*, 777 F. Supp. at 649.

King argues that the Hispanic population is insufficiently compact under *Gingles* because District Four is not itself compact. J.S. at 14-15. Even assuming that the "western connector" of District Four indeed renders the district noncompact – an incorrect assumption, as demonstrated below – King's argument is nevertheless in error. "The first *Gingles* condition refers to the compactness of the minority population, not to the compactness of the contested district." *Bush*, 116 S. Ct. at 1971 (Kennedy, J.,

concurring); *see also id.* at 1970 (O'Connor, J., concurring) (noting that, despite noncompactness of challenged District 30 in Dallas County, other potential district configurations showed requisite geographical compactness of minority population).[5] Thus, because the Hispanic population itself is geographically compact, the requisite showing under the first prong of *Gingles* is not defeated merely because the challenged district departs to some extent – here, to a very small extent – from the configuration that would *maximize* the district's compactness.

King also argues that a finding under the first prong of *Gingles* is barred as a matter of law absent proof that Hispanics constitute more than 50% of the citizen voting-age population (CVAP) of the challenged district. J.S. at 15-16. This argument presents no significant issue for review. Hispanics make up 65% of the district's total population and 59% of its voting-age population, and the district actually elected an Hispanic candidate in both 1992 and 1994. The purpose of the first prong of the *Gingles* requirement is to determine whether "minority voters possess the *potential* to elect representatives in the absence of the challenged structure or practice," *Gingles*, 478 U.S. at 50 n.17 (emphasis in original), and that potential clearly has been realized by District Four. *Cf. Bush v. Vera*, 116 S. Ct. at 1970 (noting that proof satisfied *Gingles* factors in Dallas County, Texas where reasonably compact plans with 44% or 45.6% African American populations could be drawn).

Further, even assuming that a district with less than a 50% Hispanic CVAP could never satisfy the first prong of the *Gingles* requirement,[6] this does not mandate review of

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[5] As several maps in the record indicate, a hypothetical majority Hispanic district can be drawn using regular and reasonably compact shapes, including through the use of a "middle connector." *See* D.I. App. at 2-3.

[6] For numerous reasons, it would be improper to require proof of a majority Hispanic CVAP before a majority Hispanic

this case by this Court. The lower court specifically found that King's assertion that Hispanics make up 45% of the CVAP in District Four is only an estimate. J.S. App. at 50 n.58. The district court properly declined to adopt this estimate as definitive because it reflected several flaws and omissions, most of which King ignores in his jurisdictional statement.[7]

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district could be drawn. For one thing, the Census Bureau does not release citizenship estimates when it releases the results of the census enumeration, and such information is simply unavailable at the time when states must conduct decennial redistricting early in the decade. *See also Wilson v. Eu*, 1 Cal. 4th 707, 750-51 (1992) (rejecting requirement of CVAP majority as basis for assessing the first prong of *Gingles*); *LULAC v. North East Independent School District*, 903 F. Supp. 1071, 1083-84 (W.D. Tex. 1995) (same). Further, the data the Census releases for redistricting purposes is from a full-count enumeration while the citizenship data derives from a sample count of the population. J.S. App. at 50 n.58. This sample-count citizenship data is released at the block-group level while the full-count data is released at the smaller, and more precise, block level. *Id.* Consequently, the citizenship sample-count data is subject to sampling error. *Id.* However, the issue need not be resolved here, because there is no substantial factual dispute that Hispanic residents are sufficiently numerous to elect a candidate of choice in District Four.

[7] King's estimate was flawed in part because it failed to properly account for split Census block groups; because the Census data involved is not based on an enumeration, but instead on sampling techniques that are subject to sample errors; and because it did not overcome defendant-intervenors' evidence that naturalization and an INS amnesty program had increased the number of Hispanic citizens in the district. J.S. App. at 50 n.58. Further, it is immaterial that the district court in one passage may have characterized plaintiff's 45% estimate as an estimate of the percentage of adult Hispanics who were citizens, rather than the percentage of the adult citizen Hispanics in the district. The court correctly recognized that there was simply no "competent evidence that the Hispanic

King next argues that the lower court's and the *Hastert* court's finding of the existence of racial bloc voting is in error. J.S. at 16-19. Ignoring the findings made on each of the three *Gingles* factors, King asserts that the lower court failed to determine whether the white majority voted as a bloc to usually defeat Hispanics' candidates of choice. J.S. at 17. This argument is without basis.

Substantial evidence supports the district court's conclusion of legally significant racially polarized voting in Chicago. The *King* court credited Dr. Allan Lichtman's ecological regression and extreme case analysis of forty-one elections held between 1983 and 1995. J.S. App. at 51-52. The evidence showed that Hispanics in Chicago consistently support Hispanic candidates and that the statistical results "establish a definite and continuing pattern of white racial-bloc voting against Hispanic candidates." *Id.* As a result of this bloc voting, no Hispanic candidate has ever been slated or elected to Congress, the state legislature, or the Chicago City Council except from majority Hispanic VAP districts, and only one Hispanic candidate has ever won a citywide election.[8] J.S. App. at 52.

King attempts to minimize this evidence by mischaracterizing the record established below. King erroneously asserts that only three of the 41 elections relied upon by the court showed the existence of white bloc voting. J.S. 17. This is incorrect. As the lower court found, Dr. Lichtman's analysis established that Hispanic candidates of choice have not been able to win in districts lacking a Hispanic VAP majority. Thus, of the 22 elections cited by King where the Hispanic candidate won, 19 were

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citizen voting age population falls below fifty percent." J.S. App. 50.

[8] King's own expert on racial bloc voting analysis conceded at trial that he could not identify any Hispanic candidate who won an election to a single member district in a majority white VAP district. D.I. App. at 7.

in districts with a Hispanic VAP majority.[9] In the absence of such a majority, Hispanic candidates of choice are defeated by white bloc voting. J.S. App. at 51-52.

Since Hispanic victories have come almost exclusively in Hispanic majority districts, the district court was correct in concluding that a majority Hispanic district was necessary to avoid dilution of Hispanic voting strength. This evidence and other substantial evidence fully supported the district court's findings that the second and third *Gingles* factors were present. *Cf. Bush v. Vera*, 116 S. Ct. at 1970 (O'Connor, J., concurring) (noting that racially polarized voting in Dallas County was properly demonstrated by similar evidence).

The lower court carefully reviewed the evidence on each of the three *Gingles* factors, considering not only the *Hastert* courts findings, but additional evidence put on by the parties at the 1995 trial, and found that the evidence demonstrated the existence of each factor. J.S. App. at 47-53; *id.* at 55-56 ("The *Hastert* court adopted the Fourth Congressional District to remedy a proven Section 2 violation. The injuries resulting from the dilution of the Hispanic voting power were clear and present").[10] These

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[9] In the three instances Hispanics have won in other districts, they have won as the result of the effects of party ticket inclusion (Miriam Santos for city treasurer in 1991 slated with incumbent mayor Daley, and later as an incumbent in 1995) or because of a splitting of the vote for a field of white candidates (Judges Cerda and Reyna). J.S. App. at 51.

[10] As the court below noted, the *Hastert* record included findings on additional factors supportive of a Section 2 claim under the totality of circumstances. King now asserts that the evidence on the presence of the "*Zimmer* factors" was insufficient. J.S. at ~~19~~-20. It is important to note that King declined, during the proceedings below, to challenge this evidence or put on further evidence concerning such factors. J.S. App. at 53. Thus, King has not demonstrated that the findings established in the *Hastert* record on the "totality of the circumstances" are in error.

are precisely the findings contemplated under this Court's decisions as a predicate for drawing a majority-minority district. *Bush v. Vera*, 116 S. Ct. at 1961 (noting that the three *Gingles* factors are "the threshold conditions for § 2 liability" that must be assessed under the strict scrutiny test) (plurality opinion) (citations omitted); *id.* at 1970 (O'Connor, J., concurring). Furthermore, the district court's factual findings on these issues cannot be disturbed unless they constitute clear error under Rule 52. *See, Thornburg v. Gingles*. King's arguments do not remotely suffice to meet this standard.

Plaintiff's citation of *Voinovich v. Quilter*, 507 U.S. 146, 156, 113 S. Ct. 1149 (1993), as imposing a more onerous burden for court-ordered majority-minority districts, is inapposite. In *Voinovich*, the federal court had improperly struck down a legislative redistricting plan crafted by the Ohio legislature, without proper proof of a Section 2 violation. Here, the federal court's role in crafting the 1991 redistricting plan was different because the Illinois legislature had failed to enact any redistricting plan and the *Hastert* court therefore was *required* to assume that "unwelcome obligation." *Connor v. Finch*, 431 U.S. 407, 415, 97 S. Ct. 1828 (1977). Under such circumstances, as both the *Hastert* court and the court below properly recognized, it was entirely proper for the *Hastert* court to create a majority Hispanic district to avoid unlawful dilution of Hispanic voting strength under Section 2 of the Voting Rights Act.

II. THE *HASTERT* COURT'S REMEDIAL PLAN IS NARROWLY TAILORED TO SERVE THE COMPELLING STATE INTEREST OF COMPLYING WITH THE VOTING RIGHTS ACT.

This Court has held that a district survives strict scrutiny if there is a "strong basis in evidence" to show that a majority-minority district is reasonably necessary to comply with Section 2 and that it "substantially addresses the § 2 violation." *Bush v. Vera*, 116 S. Ct. 1941,

1960 (1996) (plurality opinion) (internal citations omitted). Further, this Court has rejected as "impossibly stringent" the view that "a district must have the least possible amount of irregularity in shape, making allowances for traditional districting criteria." *Id.* (internal citations omitted). The record below fully supports the lower court's findings that District Four is narrowly tailored and meets strict scrutiny.

In creating this remedial district, the *Hastert* court narrowly tailored the district to include the specific geographically compact Hispanic population found to be discriminated against through vote dilution. *Cf. Shaw v. Hunt*. The court below also found that the district does not depart dramatically from Illinois' traditional redistricting principles. These factual findings which are, of course, entitled to deference, fully support the lower court's unanimous conclusion that District Four is narrowly tailored.

A. The Fourth Congressional District Does Not Disregard Illinois' Traditional Redistricting Principles.

District Four does not reflect a "substantial disregard" for Illinois' redistricting principles. *Miller*, 115 S. Ct. at 2497 (O'Connor, J., concurring). King asserts that political subdivisions were split excessively in the crafting of District Four. J.S. at 7-9. The evidence at trial did not support this assertion. The lower court found that "[t]he data permits the uncertain conclusion that compared to other Illinois congressional districts, the map of the Fourth Congressional District did not excessively split political subdivisions," *id.*, and further found that "[w]hile uncertain, this conclusion offers support that the Fourth District is 'reasonably compact' when viewed in comparison to other Illinois congressional districts and therefore should not be disregarded." J.S. App. at 72 n.5. Except for his argument concerning the precinct lines, King does not dispute the evidence in the record that

other congressional districts split a comparable or greater number of political subdivisions as does District Four. J.S. at 7.

In an attempt to demonstrate error, King relies exclusively on the assertion that election precincts were unduly split in the configuration of District Four. J.S. at 15. This argument is without merit. In Illinois, all precinct boundaries are reconfigured following the completion of congressional reapportionment. *10 ILCS 5/11-3*, J.S. App. at 79-80. Although precinct lines may have been split under District Four when it was ordered to be implemented by the *Hastert* court in 1991, Illinois law mandated that the precinct lines were to be realigned thereafter.

Because the precinct lines were not immediately realigned by the Chicago Board of Election Commissioners (CBEC) due to time constraints, *see*, Sawicki Aff., J.S. App. 110 at ¶ 9-10, the 1992 primary election was held under the old lines. As a result of this administrative inaction, some problems did arise of the nature complained of by King, but only for the 1992 primary election, a fact King fails to acknowledge in his jurisdictional statement. Nonetheless, the precinct lines were subsequently realigned in the summer of 1992, as required by state statute, resulting in far less split precincts. *Id.* at ¶ 10.[11]

Just because one election was held under the old precinct boundaries due to administrative inability, does not invalidate District Four. Especially in light of the fact that in Illinois, traditional redistricting principles do not include reliance on political boundaries for redistricting. *See, Rybicki v. State Board of Elections*, 574 F. Supp. 1082, 1099 (N.D. Ill. 1982) (three-judge court) (court would not

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[11] This realignment of the precinct lines would have effectively eliminated any ballot secrecy concerns. State law provides that upon realignment the CBEC should create precincts which contain "as nearly as may be practicable, 500 voters. . . . " *10 ILCS 5/11-2*, J.S. App. 76-78.

strike down the challenged plan "merely because it fractures a number of political subdivision lines or creates districts that overlap between Chicago and its surrounding suburbs"); *see also, Lawyer v. Dept. of Justice*, 117 S. Ct. 2186, 2195 (1997) (splitting political subdivisions does not violate constitutional compactness standards when such treatment is common practice in state legislative districts). And it is clear that respect for political subdivisions does not correspond to respect for communities of interest in Illinois. As the Illinois Supreme Court has stated, "boundary lines of villages, townships, counties and cities do not necessarily reveal communities of interests." *People of the State of Illinois ex rel. Burris v. Ryan*, 147 Ill.2d 270, 282 (Ill. 1991) (Heiple, concurring), *aff'd after remand*, 147 Ill.2d 270 (1992), *cert. denied*, 504 U.S. 973 (1992).

King has failed to demonstrate any error in the lower court's determination that District Four did not excessively split political subdivisions.

B. The Shape of the Fourth Congressional District is Reasonably Compact to Remedy a Finding of Vote Dilution.

District Four is comprised predominately of two densely Hispanic populated neighborhoods which are less than one mile apart and are separated by exogenous barriers. *Hastert*, 777 F. Supp. at 648-49. The district is only 14 miles wide from its western most point to its eastern most point. D.I. App. at 1. It is only 16 miles long, from north to south. *Id.* All of the district is within Cook County (D.I. App. at 6), and a vast majority of the district is within the City of Chicago. D.I. App. at 6.[12]

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[12] Here, the record establishes that the Fourth Congressional District is relatively small in size and dense in concentration which allows the current congressman for this district to be able to communicate and effectively represent the

The record below establishes that District Four was crafted as a remedy to a proven Section 2 vote dilution case. Therefore, the purpose of District Four is on providing a remedy for those Hispanics residing in the areas affected by vote dilution. As this Court has held in *Shaw II*, to be narrowly tailored the remedy must address the violation by including the areas in which minorities are geographically concentrated. *Shaw II*, 116 S. Ct. at 1905-06. In fact, this Court in *Shaw II* struck down the district at issue precisely because it failed to include those voters who had suffered from vote dilution. *Id.* at 1906. In adopting District Four, by contrast, the *Hastert* court narrowly tailored the district to include the specific geographically compact Hispanic population found to be discriminated against through vote dilution.[13]

In arguing that narrow tailoring is defeated due to the shape of the district, King misreads this Court's decision in *Bush*. This Court in *Bush* determined that district shape is relevant to the narrow tailoring inquiry only to the extent that the shapes of districts "cause constitutional harm insofar as they convey the message that political identity is, or should be, predominantly racial." *Bush*, 116 S. Ct. at 1962. However, this Court also recognized that a legislature, or a court, in an attempt to remedy a Section 2 violation may impose a race-based remedy so long as "the district drawn in order to satisfy § 2 must not subordinate traditional districting principles to race substantially more than is 'reasonably necessary' to avoid § 2 liability." *Id.* at 1961. The portion of the district that King argues gives it a noncompact visual appearance, the "western connector," contains only 4.7%

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residents within all of the district with no difficulty. D.I. App. at 4.

[13] King asserts that the "western connector" sought to include "the highest percentages of Hispanic population." J.S. at 10. However, this "connector" is comprised mostly of unpopulated areas. J.S. App. at 44 n.49.

of the overall population of the Fourth Congressional District. J.S. at 44 n.49.[14] This means that all but a small fraction of the population resides within the compact area that essentially coincides with a "hypothetical court-drawn district," (*Bush*, 116 S. Ct. at 1970) (O'Connor, J., concurring), that satisfies the first prong of *Gingles*. *Compare Shaw II*, 116 S. Ct. at 1907 (only 20% of the challenged district coincided with the area where blacks were alleged to be geographically concentrated and thus 80% of the district did not coincide with the area of compact minority population).

Also, use of the "western connector" to join the two Hispanic enclaves of population does not indicate that the Hispanic population itself was not geographically compact, as suggested by King. J.S. at 11. As the *Hastert* court determined, the two enclaves of Hispanic population did not indicate separate communities, but they "appear[ed] to have occurred as a result of exogenous physical and institutional barriers." *Hastert*, 777 F. Supp. at 649. This finding is not disputed by King.

Moreover, the "western connector" was used to preserve the shared interests of Hispanics while also protecting the three African American majority districts from vote dilution. *Hastert*, 777 F. Supp. at 655. Here, the evidence at trial provides a basis for a finding that District Four is reasonably compact while maintaining the

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[14] When only 4.7% of the population of a district lies within the area that gives rise to a noncompact visual appearance, such a *de minimis* impact should not invalidate the district. *Cf. White v. Regester*, 412 U.S. 755, 764 (1973) (maximum total deviation of 9.9% from ideal district population held insufficient to make out a *prima facie* case of one-person, one-vote violation under Fourteenth Amendment); *Gaffney v. Cummings*, 412 U.S. 735, 750-51, 93 S. Ct. 2321 (1973) (maximum total population deviation of 8% insufficient to make out a *prima facie* case under Fourteenth Amendment).

three African American historic districts.[15] Had District Four been more rectangular in shape, running north to south, *see*, D.I. App. at 2-3, this more aesthetically pleasing district would have compromised the viability of the Seventh Congressional District and led to African American vote dilution through impermissible retrogression.[16]

In addition, under the plan upheld by the court below, the African American population percentage in the three surrounding districts has already been reduced compared to the districts in place during the 1980's. Under the 1980's congressional plan, the three African American districts had black majorities well over 65% total population. *Hastert*, 777 F. Supp. at 646 n.19. After *Hastert*, those majorities were substantially reduced to just around 65% total population even with the use of the "western connector." Avoiding a violation of Section 2

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[15] The *Hastert* court specifically found that the Fourth Congressional District's shape was dictated by the need to preserve the three existing African American districts which, the court held, was required under the Voting Rights Act. *Hastert*, 777 F. Supp. at 650. As the *King* court noted, in order to provide the three pre-existing African American districts with sufficient population to create effective and constitutional (one-person, one-vote) districts, the shape of the African American districts necessarily affected the boundaries of the Fourth Congressional District and resulted in the "western connector." J.S. App. at 44 n.49. The lower court further found that in the absence of evidence that the three existing African American districts are unconstitutional (King has not challenged the constitutionality of these districts), the preservation of these districts was a valid secondary consideration along with protecting the incumbency of the Seventh Congressional District representative. J.S App. 70-71 n.4.

[16] In a Section 2 context, retrogression of minority-majority districts can lead to unlawful vote dilution. *See, Ketchum v. Byrne*, 740 F.2d at 1406 (holding that retrogression in the number of minority wards can form a basis for a violation under Section 2 of the Voting Rights Act where the number of African American wards decreased from nineteen to seventeen).

with respect to African Americans was a substantial justification for the use of the "western connector" and the resultant minor departure from maximum possible compactness. As a result, the lower court adopted a plan that preserved the voting rights of both the Hispanic and African American voters, at no expense to white voting strength. Therefore, the *King* court correctly concluded that the plan was "properly proportioned to the nature of the violation" and was "narrowly tailored." J.S. App. at 57.

C. The Fourth Congressional District Respects Communities of Interest.

The evidence below illustrates that District Four contains a community with actual shared social and economic interests. J.S. App. at 51-52 n.59.[17] A noted ethnographer and sociologist, Dr. Felix Padilla, testified about the economic and social cohesiveness of the Hispanic residents of District Four. These commonalities

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[17] King's reproduction of the lower court's March 6, 1996 opinion in the Appendix to his Jurisdictional Statement is incomplete. King's appendix omits important language from footnote 59 of the lower court's opinion. For the Court's convenience, the correct language is as follows:

> To the contrary, the factual record is replete with testimony establishing the political and social cohesiveness of the Hispanic community. Senators Jesus Garcia and Miquel Del Valle both testified about the common political concerns of the Mexican-Americans and Puerto-Ricans and their joint efforts to represent the entire Latino community in the Illinois General Assembly. Congressman Luis Gutierrez likewise identifies common political, economic and social concerns that affect both Mexican-Americans and Puerto-Ricans. Dr. Felix Padilla, a respected sociologist and ethnographer, also testified at length about the historical as well as present-day solidarity and cohesiveness of the Chicago Latino community.

included a common history of combatting social and political concerns as a unified group. *Id.* Also, during the trial on the 1991 *Hastert* litigation, persons who were involved in developing District Four as a proposed plan offered evidence to the *Hastert* court which demonstrated that the Hispanic population within District Four had common social and economic concerns. *Id.*

Additional evidence was brought out at trial which showed that Hispanics in District Four shared common socio-economic concerns, while the white, African American and Hispanic populations in Chicago have substantially different socio-economic characteristics in areas of home ownership, income levels, unemployment, education and poverty levels. J.S. App. at 45-46. Importantly, the *King* court noted that the testimony of Dr. D. Garth Taylor demonstrated that the socio-economic characteristics of District Four contrasted greatly with the socio-economic characteristics of the surrounding African American congressional districts. *Id.* Thus, rather than disregarding communities of interest, the *Hastert* remedial plan respects communities of interest. This also provides substantial justification for the creation of District Four.

The *Hastert* court determined that the Hispanic community was geographically compact, politically cohesive and unable to elect candidates of their choice due to white bloc voting. *Hastert*, 777 F. Supp. 649-51. Furthermore, the court crafted a remedy which included the very same population experiencing vote dilution, and limited the district to the minimum number of Hispanic residents generally believed necessary to provide an opportunity to elect a candidate of choice. As this Court has stated "[a] Section 2 district that is reasonably compact and regular, taking into account traditional districting principles such as maintaining communities of interest and traditional boundaries, may pass strict scrutiny without having to defeat rival compact districts designed by plaintiffs' experts in endless 'beauty contests'." *Bush v. Vera*, 116 S. Ct. at 1960.

III. IN APPLYING STRICT SCRUTINY TO THE CHALLENGED PLAN, THE DISTRICT COURT PROPERLY DEFERRED TO THE *HASTERT* COURT FINDINGS SUBJECT TO KING DEMONSTRATING ERROR OR CHANGED CIRCUMSTANCES.

King erroneously claims that he should not have been bound by the findings of *Hastert* court. J.S. at 22-26. Because the procedural facts of this case are unique, and in an effort towards judicial economy, the *King* court correctly conditionally admitted the *Hastert* court findings under Federal Rule of Evidence 201.

King asserts that the district court erred in treating this case under Federal Rule of Civil Procedure 60(b) because he was not a party to the *Hastert* litigation. J.S. at 24. This is a non-issue. It is undisputed that King was not a party or in privity to the *Hastert* litigation. However, because the essence of King's lawsuit was essentially an attack on the remedial plan adopted by the *Hastert* court, the lower court appropriately applied a modified version of the Rule 60(b) standard. J.S. App. at 7-12. Moreover, the ultimate issue of whether District Four is justified under a constitutional analysis was reviewed *de novo*. J.S. App. at 16-17.

The lower court's conditional admittance of the *Hastert* court's findings was proper and presents no issue warranting further review. The court did not give those findings conclusive effect; rather, King was given a full opportunity at trial to show that the *Hastert* findings were in error or were no longer valid. The lower court held that it would admit into evidence the findings of fact of the *Hastert* court and would adopt those findings unless King demonstrated (1) that the findings were "clearly erroneous"; or (2) that, by a preponderance of evidence, specific factual circumstances had changed. J.S. App. at 15-16.

King was given a full opportunity to prove his case. He had three trial days to show that the *Hastert* findings were wrong or that changed circumstances existed. At

trial all parties addressed the issues of the *Gingles* preconditions, communities of interest, and traditional redistricting principles. King was not precluded from proving his case in any manner. Rather, he was unable to put forth competent evidence to support his claim. King has not raised a valid issue for review by this Court.

CONCLUSION

King's arguments are completely without merit to warrant any further review from this Court. The Fourth Congressional District is an appropriate remedy to address proven vote dilution. The record in this case clearly supports the lower court's findings that the Fourth Congressional District meets strict scrutiny. For the reasons noted above, this Court should grant Defendant-Intervenors' Motion to Affirm.

Dated: December 30, 1997

Respectfully submitted,

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No. 97-743

In The

Supreme Court of the United States

October Term, 1997

JAMES R. KING,

Appellant,

v.

STATE BOARD OF ELECTIONS, *et al.*,

Appellees,

BOBBY RUSH, TIMUEL BLACK, AL JOHNSON, ELVIRA CARRIZALES, NEOMI HERNANDEZ and THE CHICAGO URBAN LEAGUE,

Defendant-Intervenors.

On Appeal From The United States District Court For The Northern District Of Illinois

APPENDIX TO DEFENDANT-INTERVENORS' MOTION TO AFFIRM

APPENDIX

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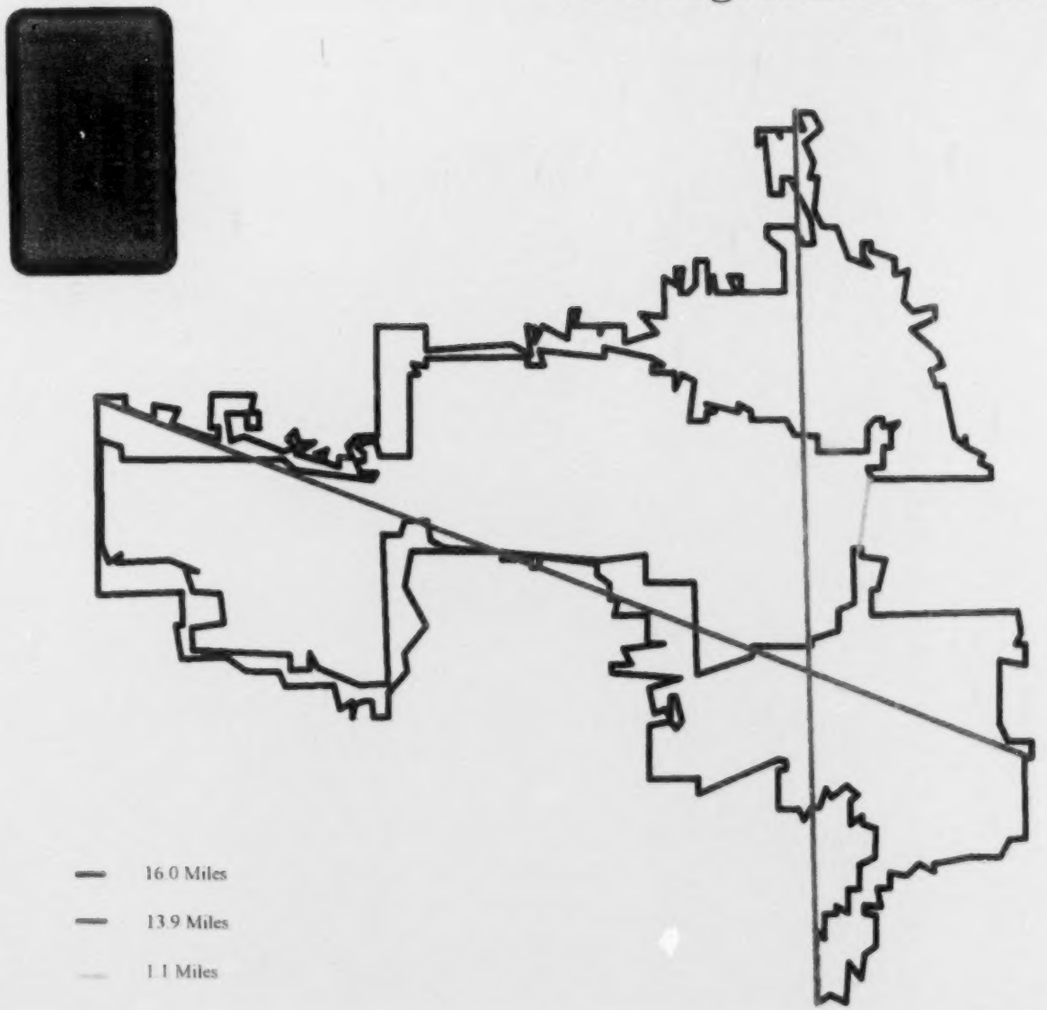
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4th Congressional District



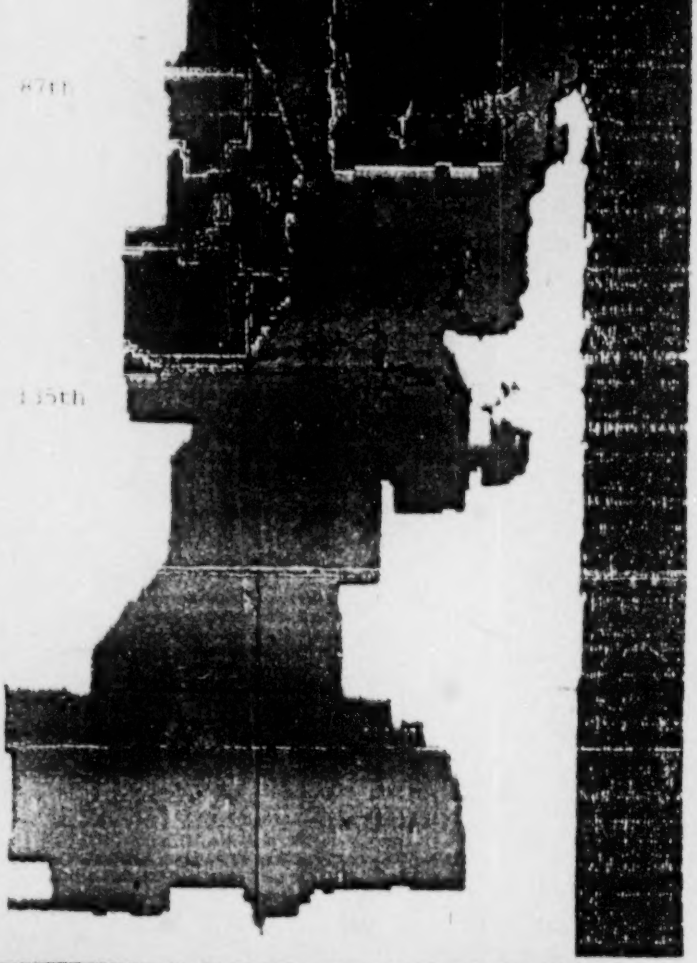
4th Congressional District

Miles
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Metro Chicago Information Center

Source: U. S. Department of the Census

App. 2



DEFENDANT'S EXHIBIT

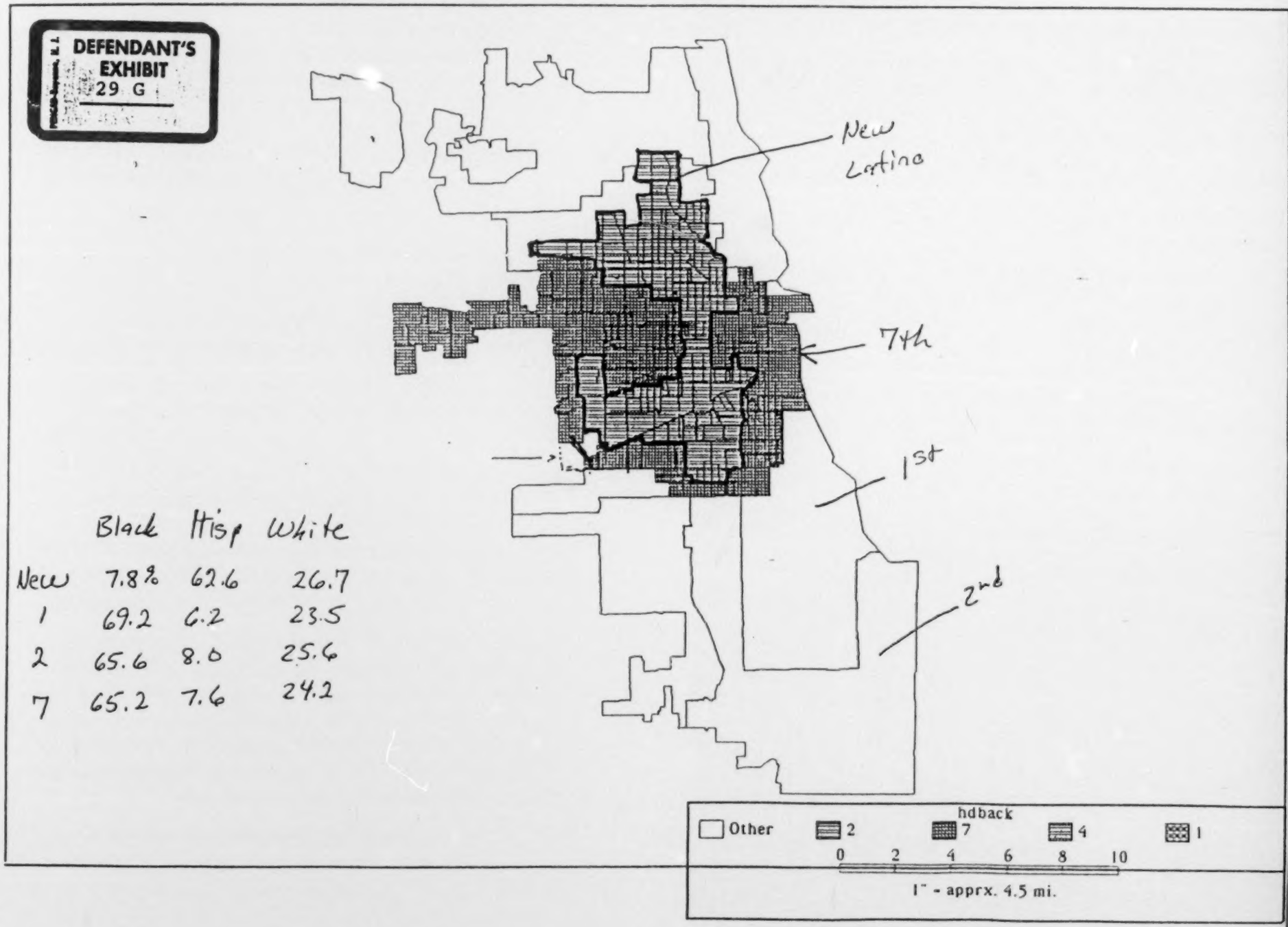
DISTRICT		90	90	90	90
571530		HSP POP %	NHW POP %	BLK POP %	HSP VAP %
=1	571529	6.836	25.644	66.478	5.760
=6	571524	63.859	26.732	7.284	57.977
0	571590	6.684	25.181	67.862	5.931
=571530	0	0.000	0.000	0.000	0.000
=6	571524	4.637	25.931	68.650	4.005

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App. 3

MNVREP/MALDEF MINORITY CONGRESSIONAL DISTRICTS, JUNE 6 91

DEFENDANT'S EXHIBIT 29 G



	Black	Hisp	White
New	7.8%	62.6	26.7
1	69.2	6.2	23.5
2	65.6	8.0	25.6
7	65.2	7.6	24.2

EXCERPT TESTIMONY FROM DISTRICT EXAMINATION OF CONGRESSMAN LUIS GUTIERREZ

* * *

[p. 537] Q And does that enable you to effectively represent the 4th Congressional District?

A I believe it has.

Q Is it difficult for you to get around the district to communicate with your constituents?

A Takes me 20 minutes to get from just about any point in the congressional district from one point to another.

Q Now, have you had any trouble campaigning in the district?

A Absolutely not. It's – it's easy to campaign because it's easy to get from one church to another on Sundays, and almost all of the churches are open to me for campaigning, and the bus stops and the train stops and typical kinds of campaigning. It's easy to get around the congressional district.

I mean if you hold an activity on, you know, Damen and 47th Street and the next one is up on Western by Addison, you might get – and they're within half an hour. But it's very simple. I know of – I know that I have members and colleagues of mine in Congress who have to spend hours getting from one part of their congressional district to another part of their congressional district.

Q Is the 4th Congressional District in one media market?

A Yes, one media market, the Chicago media market.

Q And that incudes both the English and Spanish media market?

[p. 538] A Both the English and Spanish media market, which has been borne out by our citizenship campaign.

* * *

Q Now, an area that's part of the 4th Congressional District is the Stone Park area; is that right?

A Yes.

Q And do you service that area?

A Yes. I was there last Saturday and I have been there probably not as frequently as I should be. I visited that area four times at least since I become elected a member of Congress.

Q And do the residents of Stone Park in your view share the common concerns of the residents of the rest of the 4th Congressional District?

A Yes, they do.

Q And is it difficult for you to get to Stone Park?

A Straight down North Avenue or the Eisenhower Expressway, whichever suits you better, to Mannheim.

* * *

EXCERPT OF TESTIMONY FROM CROSS EXAMINATION OF CHRISTOPHER CLEVELAND

* * *

[p. 240] Q And starting with counties, this district, of course, is all in Cook County, correct?

A That's correct.

* * *

[p. 253] Q And the political subdivisions that are split, the townships and places, that is specifically because of the western connector, correct, the places and the townships?

A Yes, limited to those two categories of split political subdivisions, yes. The townships and the counties were split primarily because of the western connector.

That's also largely because the district is primarily within the city of Chicago. The way the boundaries are drawn, were there townships within the area of the city of Chicago, were it villages, were it like some other place, it certainly would have split a lot of those, too.

* * *

EXCERPT TESTIMONY FROM CROSS EXAMINATION OF CHRISTOPHER CLEVELAND

* * *

[p. 721] Q Well, let's first start with that then. In single member districts do you know – can you identify an Hispanic candidate who has ever won in a majority VAP white district?

A At this time, without the numbers, no. I could certainly concede that there aren't many of them, if that would –

Q Well, I would –

JUDGE NORGLE: Can you identify any one of those, in keeping with Mr. Jerome's question, on your winners' list?

THE WITNESS: Without the numbers, I can't because I don't – I did not put down what the VAP – what the white VAP is here.

BY MR. JEROME:

Q Now, Dr. Lichtman has that in his analysis, does he not, and as part of his report?

A Yes.

Q And so you could have looked at it and –

A In fact I did and I put it in my spreadsheet here.

Q And when doing that, did you look at or did you discover any Hispanic candidate who won in a majority with VAP district? Do you recall –

A I don't recall that, no.

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